

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHELEPE LUNN,

Plaintiff,

v.

SHAWN GRAHAM

Defendant.

Case No. 23-10378

Honorable Laurie J. Michelson

Magistrate Judge Patricia T. Morris

**ORDER ADOPTING REPORT AND RECOMMENDATION [27] AND
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [22]**

Phelepe Lunn was incarcerated at the Woodland Correctional Facility in Whitmore Lake, Michigan. In September 2022, Lunn grieved Corrections Officer Shawn Graham for sleeping and watching YouTube videos while on the job. Thereafter, says Lunn, Graham repeatedly retaliated against him, including by calling him a “snitch” in front of other inmates, writing a false misconduct ticket, and conducting harassing cell searches. Lunn wrote to Warden DeAngelo and Deputy Warden Mates about this retaliation, but Lunn says they failed to take corrective action against Graham.

So Lunn filed this *pro se* civil rights action under 42 U.S.C. § 1983 against Deangelo, Mates, and Graham, alleging violations of his rights under the First and Eighth Amendments of the United States Constitution. (ECF No. 1, PageID.3–5.) The Court *sua sponte* dismissed Lunn’s claims against Deangelo and Mates. (See ECF No. 5.) The only remaining defendant, Graham, filed a motion for summary judgment on

all claims. (ECF No. 22.) Before the Court is Magistrate Judge Patricia T. Morris' Report and Recommendation recommending Graham's motion be granted and the case be dismissed. (ECF No. 27, PageID.271.)

At the conclusion of the April 1, 2024, Report and Recommendation, Judge Morris notified the parties that they were required to file any objections within fourteen days of service, pursuant to Federal Rule of Civil Procedure 72(b)(2) and Eastern District of Michigan Local Rule 72.1(d), and that "[f]ailure to file specific objections constitutes a waiver of any further right of appeal." (*Id.* at PageID.289.) Under Federal Rule of Civil Procedure 6(d), since Lunn was served via mail, three days are added to the objection period. In all, waiting the 17-day objection period and allowing some time for the Court to receive objections that Lunn may have mailed, it has now been more than 30 days since the Report was served on the parties. No objections have been filed.

The Court finds that the parties' failure to object is a procedural default, waiving review of the magistrate judge's findings by this Court. In *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981), the Sixth Circuit established a rule of procedural default, holding that "a party shall file objections with the district court or else waive right to appeal." And in *Thomas v. Arn*, 474 U.S. 140, 149 (1985), the Supreme Court explained that the Sixth Circuit's waiver-of-appellate-review rule rested on the assumption "that the failure to object may constitute a procedural default waiving review even at the district court level." *See also Garrison v. Equifax Info. Servs., LLC*, No. 10-13990, 2012 WL 1278044, at *8 (E.D. Mich. Apr. 16, 2012)

(“The Court is not obligated to review the portions of the report to which no objection was made.” (citing *Thomas*, 474 U.S. at 149–52)). The Supreme Court further held that this rule does not violate either the Federal Magistrates Act or the Federal Constitution. *Thomas*, 474 U.S. at 155. And “although exceptional circumstances may warrant departure from this forfeiture rule in the interests of justice, no such circumstances are present in this case.” *White v. AJM Packaging Corp.*, No. 23-1618, 2024 U.S. App. LEXIS 5824, at *4 (6th Cir. March 11, 2024) (citing *Thomas*, 474 U.S. at 155; *Keeling v. Warden, Lebanon Corr. Inst.*, 673 F.3d 452, 458 (6th Cir. 2012)).

The Court therefore finds that the parties have waived further review of the Magistrate Judge’s Report and Recommendation (ECF No. 27) and accepts the recommended disposition. It follows that Graham’s motion for summary judgment (ECF No. 22) is GRANTED. A separate judgment will follow.

IT IS SO ORDERED.

Dated: May 8, 2024

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE